



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0096; FRL-11663-01-R4]

Air Plan Approval; Florida; Revisions to the State Implementation Plan Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) through a letter dated August 12, 2022. The revision updates the general conformity portion of the conformity rule in Florida's SIP. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2023-0096 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Ortiz can be reached via phone number (404) 562-8085 or via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

General conformity is a requirement of CAA section 176(c). General conformity prohibits Federal actions within nonattainment and maintenance areas unless the emissions from the actions conform to the applicable SIP, Tribal Implementation Plan (TIP), or Federal Implementation Plan (FIP) for the area.¹ Conformity to an implementation plan means conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS or standards) and achieving expeditious attainment of such standards. *See* section 176(c)(1). Under general conformity, Federal actions cannot: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any air quality standard in any area; or (3) or delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. *Id.*

EPA promulgated two sets of conformity regulations in November 1993 to implement section 176(c) of the CAA. First, EPA promulgated transportation conformity regulations, which apply to highways and mass transit, on November 24, 1993. *See* 58 FR 62188. These regulations establish the criteria and procedures for determining whether transportation plans,

¹ "Federal action" is defined at 40 CFR 93.152 as "any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval."

programs, and projects funded under 23 U.S.C. or the Federal Transit Act (40 U.S.C. chapter 53) conform with implementation plans. EPA subsequently revised the transportation conformity regulations several times. *See* 69 FR 40004 (July 1, 2004); 70 FR 24280 (May 6, 2005); 71 FR 12468 (March 10, 2006); and 73 FR 4420 (January 24, 2008). Second, on November 30, 1993, EPA promulgated the general conformity regulations at 40 CFR part 51, subpart W and 40 CFR part 93, subpart B, which applied to all other Federal actions to ensure they conformed with implementation plans. *See* 58 FR 63214. EPA has revised its general conformity regulations twice. *See* 71 FR 40420 (July 17, 2006) and 75 FR 17254 (April 5, 2010). As part of the 2010 revisions, EPA revised its general conformity regulations to remove rules from 40 CFR part 51, subpart W that were duplicative of those in 40 CFR part 93, subpart B. *See* 75 FR 17254 (April 5, 2010).²

Florida Rule 62-204.500, Florida Administrative Code (F.A.C.), *Conformity*, addresses general conformity in paragraph (1). EPA incorporated Rule 62-204.500 into the Florida SIP in a direct final rule on August 11, 2003. *See* 68 FR 47468. Since then, Florida has amended Rule 62-204.500, and those changes are the subject of this notice of proposed rulemaking (NPRM).³

II. EPA’s Analysis of Florida’s Submittal

Florida’s August 12, 2022, SIP revision updates Rule 62-204.500, *Conformity*. Specifically, the SIP revision changes the “General Conformity” section at paragraph (1) by updating cross-references.

Florida’s SIP revision updates two cross-references in paragraph (1) of Rule 62-204.500. Specifically, the revision replaces two cross-references that refer to 40 CFR part 51, subpart W, with references to 40 CFR part 93, subpart B. The SIP-approved version of paragraph (1), states that it applies to state review of all Federal general conformity determinations submitted to the

² For more information on general conformity, see <https://www.epa.gov/general-conformity>.

³ The August 12, 2022, submittal transmits several changes to other Florida SIP-approved rules. These changes are not addressed in this proposed rulemaking and will be considered by EPA in separate rulemakings. In addition, EPA will not act on subsections 62-204.500(1)(a)-(1)(d), F.A.C., because they were withdrawn from EPA consideration in a letter dated January 5, 2024, which is in the docket for this proposed rulemaking.

state pursuant to 40 CFR part 51, subpart W. It also states that pursuant to 40 CFR part 51, subpart W, Federal agencies are required to make conformity determinations to ensure that certain Federal actions are consistent with the SIP. As mentioned in Section I of this notice, EPA removed rules from 40 CFR part 51, subpart W that were duplicative of those in 40 CFR part 93, subpart B. Because the SIP-approved version of Rule 62-204.500 relies on the duplicative rules that EPA removed from 40 CFR part 51, the SIP-approved rule is outdated. EPA is proposing to approve the changes to paragraph (1) because they update the cross-references to the correct location of the implementing requirements for general conformity.

III. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section II of this preamble, the EPA is proposing to incorporate by reference Florida Rule 62-204.500, F.A.C., *Conformity*, state effective on October 23, 2016, except for 62-204.500(1)(a), 62-204.500(1)(b), 62-204.500(1)(c), and 62-204.500(1)(d). The EPA has made, and will continue to make, the SIP generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

For the reasons discussed above, EPA is proposing to approve the August 12, 2022, Florida SIP revision updating Rule 62-204.500, *Conformity*, in the Florida SIP.

V. Statutory and Executive order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to

approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The FDEP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 17, 2024.

Jeaneanne Gettle,
Acting Regional Administrator,
Region 4.

